

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2004 JUL -6 P 2: 25

DR. THOMAS M. EDSALL, and
GRISEL EDSALL,
Plaintiffs

v.

ASSUMPTION COLLEGE, DR. THOMAS
R. PLOUGH, DR. JOSEPH F. GOWER,
and DR. JOHN F. MCCLYMER,
Defendants

CIVIL ACTION
NO. 04-40106-FDS

**DEFENDANT JOHN F. MCCLYMER'S MOTION TO DISMISS
PURSUANT TO F.R.Civ.P. 12(b)(6)**

Defendant, John F. McClymer, hereby moves the Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss all claims against Mr. McClymer on the grounds that the Complaint fails to state a claim upon which relief may be granted, all as more fully argued below.

ARGUMENT

The Complaint fails to allege any action on the part of Defendant John F. McClymer which would support Plaintiffs' claims. The only allegation of an act by Mr. McClymer is contained in paragraph 12 of the Complaint in which it is alleged that "Defendant McClymer informed Dr. Edsall that he (Dr. Edsall) should seek employment elsewhere because Defendants Plough and Gower were intent on hiring a minority candidate in an effort to increase diversity at A.C." The Complaint then alleges in paragraph 15 that the History Department (of which Defendant McClymer was a member) formally recommended Dr. Edsall for the tenure track position. Plaintiffs allege

that it was Defendants Gower and Plough who rejected the Search Committee's recommendation and chose another candidate. As Plaintiffs allege in paragraph 11 of the Complaint, Defendant McClymer served as the Chair of the Latin American Search Committee that recommended Mr. Edsall's hire.

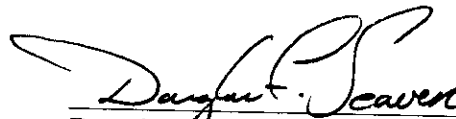
Plaintiffs have alleged no discriminatory action by Mr. McClymer and all counts in the Complaint should be dismissed as to Defendant John F. McClymer.

Dated: July 2, 2004

Respectfully submitted,

JOHN F. MCCLYMER,
Defendant

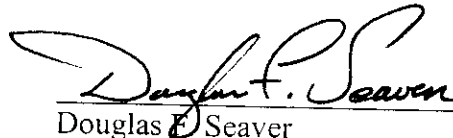
By his attorneys,



Douglas F. Seaver, BBO# 450140
Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109-1775
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CERTIFICATE OF SERVICE

I, Douglas F. Seaver, hereby certify that on this 2nd day of July, 2004, I served a copy of Defendant John F. McClymer's Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) upon Plaintiffs by mailing the same via first class mail postage paid, to Plaintiffs' counsel of record, James B. Krasnoo, Esq. & Paul J. Klehm, Esq., Law Offices of James B. Krasnoo, 23 Main Street, Terrace Level, Andover, MA 01810 and Karim H. Kamal, Esq., 630 Fifth Avenue, Suite 3163, New York, NY 10111.


Douglas F. Seaver